



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

CARY v. NORTHWESTERN MUT. LIFE INS. CO.

June 10, 1920.

[103 S. E. 580.]

1. Contracts (§ 169*)—Circumstances of Execution Should Be Considered.—In construing every contract the court should consider the relations of the parties, the objects to be accomplished, and the general circumstances attending execution.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 395.]

2. Insurance (§ 84 (2)*)—State General Agent Not Entitled to Commission on Change of Policy Issued Through General Agent in Another State; "Solicit."—General agent for life insurance company in state of Virginia, prohibited by his contract from soliciting insurance outside his own territory, held not entitled to commissions on change of a convertible term policy, issued through the office of the company's general agent in New York City, into a 20-payment life policy, not having procured New York general agent's consent, though change took place at instance of brother of insured, not at Virginia agent's active solicitation, and though policy was not original; "solicit," in general agency contract, not having been intended to have narrow and restricted meaning.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Solicit.]

3. Estoppel (§ 52*)—Action to Prejudice of Party Must Have Been Caused.—A waiver, to operate as an estoppel, must arise from conduct evidencing both knowledge and an intention to waive the right in question, and the party against whom an estoppel is sought must by his conduct have caused the party who invokes the estoppel to have acted to his prejudice.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 272, et seq.]

4. Insurance (§ 84 (2)*)—Insurance Company Not Estopped to Rely on Agency Contract as Against Suit for Commissions.—Life insurance company which received from general agent in Virginia a term policy issued through a general agent in New York, with request for conversion into a 20-payment life policy, held not estopped from invoking, as a defense to the Virginia agent's suit for commissions on the change, his contract prohibiting him from soliciting insurance, renewals, etc., outside of his own territory.

5. Insurance (§ 84 (6)*)—Burden of Proof on Agent Suing for Commissions.—The burden was on the general agent of a life insurance company suing it for commissions to show that he was entitled to them.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Error to Law and Equity Court of City of Richmond.

Action by T. A. Cary against the Northwestern Mutual Life Insurance Company. From judgment for defendant on demurrer to plaintiff's evidence, plaintiff brings error. Affirmed.

Lucius F. Cary and *W. R. Meredith*, both of Richmond, for plaintiff in error.

Munford, Hunton, Williams & Anderson, of Richmond, for defendant in error.

GRAHAM *v.* COMMONWEALTH.

June 10, 1920.

[103 S. E. 565.]

1. Criminal Law (§ 595 (6)*)—Continuance for Absent Witnesses Who Would Have Testified to Immaterial Matters Properly Denied.—Where accused expressly testified that he shot deceased only in self-defense, although the disagreement leading up to the killing arose from deceased's act in arresting accused's sister, continuance on account of the absence of witnesses who would have testified that the arrest was because of deceased's personal ill will toward the sister was properly refused; the testimony being immaterial.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 286.]

2. Homicide (§ 191*)—Deceased's Motive in Arresting Accused's Sister Immaterial, Where Accused Claimed Self-Defense.—Where accused testified he shot deceased only in self-defense, evidence tending to show that deceased's arrest of accused's sister, which led to the encounter, was on account of malice toward her, was immaterial.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 140.]

3. Homicide (§ 188 (7)*)—Deceased's Habit as to Swearing Admissible to Rebut Accused's Testimony That He Swore at Accused.—To rebut testimony of accused, claiming self-defense, that when deceased advanced toward accused, reaching for his gun, he used violent, and abusive language, evidence of deceased's nonhabit of swearing was admissible.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 145.]

4. Criminal Law (§ 683 (2)*)—Immaterial Evidence Rebuttable to Prevent Prejudice.—If at the instance of one party, evidence has been admitted, unobjected to, which is immaterial, then, where such action is needed for removing an unfair prejudice which might otherwise ensue from the original evidence, it is a proper exercise of judicial discretion to admit evidence in rebuttal of such immaterial evidence.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 300.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.